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December 22, 2017

VIA E-MAIL

Barnes Johnson, Director
Office of Resource Conservation
and Recovery
Office of Land and Emergency Management
US Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 5301P
Washington, DC 20460

Re: Importation of Spent Precious Metal Material

Dear Mr. Johnson:

Thank you again for meeting with Sabin Metal Corporation about potential ways of reducing the barriers to importation of precious metal bearing catalysts for reclamation at its state-of-the-art facility in North Dakota.

Based on our discussion, the “transfer-based exclusion” (as described in the 2008 “definition of solid waste” rule, 73 Fed. Reg. 64,668 (Oct. 30, 2008)) appears to be a promising option for facilitating the importation of precious metal bearing material by exempting it from the definition of “solid waste” (and therefore from the definition of “hazardous waste”). Sabin Metal’s understanding of the conditions for use of that exclusion is as follows:

- The “transfer-based exclusion” would need to be reinstated following resolution of all issues in *API v. EPA*, No. 09-1038 (D.C. Cir. panel decision July 7, 2017). Depending on the how the court shapes the final remedy in that case, the transfer-based exclusion may or may not include K171 and K172 wastes (which typically do not contain precious metals), but even if those materials are deemed to be ineligible for the reinstated exclusion, it still would cover other spent catalysts.
- All requirements set out in the 2009 version of 40 C.F.R. § 261.4(a)(24) would need to be satisfied, including maintenance of necessary financial assurance for the reclamation facility.
- The importer of record could satisfy the generator responsibilities under the exclusion and could be an affiliate of, agent of, or otherwise related to the reclaimer.

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- The transfer-based exclusion would need to be recognized by an authorized state where a reclamation facility is located, such as North Dakota.

Under those circumstances, spent precious metal bearing catalysts would not be considered hazardous waste under U.S. law and could be shipped to a reclaimer without using a hazardous waste manifest. Furthermore, EPA would be expected to take the position that any such spent precious metal bearing catalysts imported into the United States were not hazardous wastes such that there would be no U.S.-related impediment to an exporting country releasing such materials pursuant to the Basel Convention when the exporting country also does not classify them as hazardous waste.

Sabin Metal would very much appreciate receiving confirmation from your office that its understanding of the transfer-based exclusion in the import context is correct.

Very truly yours,



Roger W. Patrick
Counsel for Sabin Metal

Judicial challenges to EPA's Clean Air Act new source performance standards (NSPS) for residential wood heaters have been pending in the D.C. Circuit since March 2015. The parties pursued settlement negotiations for approximately one year, but the prior administration decided in August 2016 to litigate the case. Under the current briefing schedule, the parties would brief the merits throughout the remainder of 2017.

Request: EPA/DOJ agree to a temporary stay of the litigation to allow the new leadership time to consider Hearth, Patio & Barbecue Association's (HPBA) settlement proposal, which was originally submitted to EPA in September 2015.

* * *

HPBA believes there are significant problems with certain provisions of the wood heater NSPS that this administration might be interested in addressing. As background, the wood heater NSPS regulates three categories of wood heaters (woodstoves, hydronic heaters, and forced-air furnaces) through a two-step process. The "Step 1" standards, which we do not take issue with, took effect in May 2015. The "Step 2" standards, which will take effect in May 2020, are overly stringent, lack legal support, and are not cost reasonable. Those standards could regulate some HPBA members out of existence.

- As background, after the original wood heater NSPS was promulgated in 1988, the woodstove industry compressed from several hundred companies to approximately only 60 companies.
- Another round of compression is likely as a result of the 2020 standards, and that would have a significant impact on small businesses. Indeed, HPBA is already aware of some companies that have decided to exit the residential hearth appliance industry.
- It is noteworthy that a large number of entities that are subject to the wood heater NSPS are small businesses, and a significant portion of their customers live in rural areas.

Recently, EPA's wood heater NSPS has generated a great deal of attention in Congress. Two legislative proposals have been introduced in the House: one bill calls for a 3-year extension of the 2020 compliance date; the other bill calls for an outright repeal of the wood heater NSPS.

- To be clear, HPBA does not support the total repeal of the wood heater NSPS. Again, we do not take issue with the Step 1 standards. Companies have already invested considerable time and money to comply with those standards, and HPBA members support a reasonable federal standard over a confusing patchwork of state regulation.
- Of equal importance, HPBA does not believe that a 3-year extension of the 2020 compliance date would provide a complete remedy. Certain aspects of the rule are fatally flawed and cannot be fixed merely by moving the compliance deadline back. An extension would, however, give HPBA additional time to try to reach a settlement with EPA or, if absolutely necessary, to try to obtain relief from the D.C. Circuit.

At this time, we do not expect EPA to be in a position to make decisions on the merits of HPBA's settlement proposal. We simply ask that it agree to temporarily stay the litigation so that it can fully evaluate our proposal.

Appointment

From: bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]
Sent: 11/8/2018 8:49:55 PM
To: bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]; Schwab, Justin [schwab.justin@epa.gov]; Weinberg, David [DWeinberg@wileyrein.com]; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org) [dmanchester@croplifeamerica.org]; Waugh, Ted [Ted_Waugh@americanchemistry.com]; Dawson, Elizabeth [EDawson@crowell.com]; Nathanson, Kirsten L. [KNathanson@crowell.com]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: FW: CBD v. EPA call
Location: **Ex. 6 Personal Privacy (PP)**
Start: 11/9/2018 7:00:00 PM
End: 11/9/2018 8:00:00 PM
Show Time As: Tentative

Appointment

From: Weinberg, David [DWeinberg@wileyrein.com]
Sent: 12/5/2018 10:08:11 PM
To: Weinberg, David [DWeinberg@wileyrein.com]; Schwab, Justin [schwab.justin@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Dyner, Mark [dyner.mark@epa.gov]; Waugh, Ted [Ted_Waugh@americanchemistry.com]; ctaub@steptoe.com; Dawson, Elizabeth [EDawson@crowell.com]; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org) [dmanchester@croplifeamerica.org]; Nathanson, Kirsten L. [KNathanson@crowell.com]; bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: FW: call with EPA, DOJ & Intervenor's Counsel re Mega Settlement
Location: see below
Start: 12/7/2018 7:30:00 PM
End: 12/7/2018 9:00:00 PM
Show Time As: Tentative

Appointment

From: Weinberg, David [DWeinberg@wileyrein.com]
Sent: 12/5/2018 10:08:11 PM
To: Weinberg, David [DWeinberg@wileyrein.com]; Schwab, Justin [schwab.justin@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Dynner, Mark [dynner.mark@epa.gov]; Waugh, Ted [Ted_Waugh@americanchemistry.com]; ctaub@steptoe.com; Dawson, Elizabeth [EDawson@crowell.com]; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org) [dmanchester@croplifeamerica.org]; Nathanson, Kirsten L. [KNathanson@crowell.com]; bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: FW: call with EPA, DOJ & Intervenor's Counsel re Mega Settlement
Location: see below
Start: 12/7/2018 7:30:00 PM
End: 12/7/2018 9:00:00 PM
Show Time As: Tentative

This is the invite for the meeting with Intervenor's.

-----Original Appointment-----

From: Weinberg, David <DWeinberg@wileyrein.com>
Sent: Thursday, November 29, 2018 5:09 PM
To: Weinberg, David; Waugh, Ted; ctaub@steptoe.com; Dawson, Elizabeth; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org); Nathanson, Kirsten L.; bridget.mcneil@usdoj.gov; Knorr, Michele
Subject: call with EPA, DOJ & Intervenor's Counsel re Mega Settlement
When: Friday, December 07, 2018 2:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: see below

Dial-in: [Ex. 6 Personal Privacy (PP)]
Conf. code [Ex. 6 Personal Privacy (PP)]

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Sent: 11/8/2018 8:49:55 PM
To: bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]; Schwab, Justin [schwab.justin@epa.gov]; Weinberg, David [DWeinberg@wileyrein.com]; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org) [dmanchester@croplifeamerica.org]; Waugh, Ted [Ted_Waugh@americanchemistry.com]; Dawson, Elizabeth [EDawson@crowell.com]; Nathanson, Kirsten L. [KNathanson@crowell.com]; Knorr, Michele [Knorr.Michele@epa.gov]
Subject: FW: CBD v. EPA call
Location: Ex. 6 Personal Privacy (PP)
Start: 11/9/2018 7:00:00 PM
End: 11/9/2018 8:00:00 PM
Show Time As: Tentative

-----Original Appointment-----

From: McNeil, Bridget (ENRD) <Bridget.McNeil@usdoj.gov>
Sent: Thursday, November 08, 2018 3:45 PM
To: McNeil, Bridget (ENRD); Weinberg, David; rlattimore@croplifeamerica.org; Doreen Manchester (dmanchester@croplifeamerica.org); Waugh, Ted; Dawson, Elizabeth; Nathanson, Kirsten L.; Knorr, Michele
Subject: CBD v. EPA call
When: Friday, November 09, 2018 12:00 PM-1:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Ex. 6 Personal Privacy (PP)

Appointment

From: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Sent: 3/28/2019 1:50:49 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; DCRoomARN4045/DC-Ariel-Rios-OGC [DCROOMARN4045@epa.gov]; 'bbrown@crowell.com' [bbrown@crowell.com]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Bolen, Derrick [bolen.derrick@epa.gov]; Nathanson, Kirsten L. [KNathanson@crowell.com]; Shaffer, Patricia [Shaffer.Patricia@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]
CC: Chung, David [DChung@crowell.com]; Koch, Erin [Koch.Erin@epa.gov]; Lawrence-Hammer, Lesley (ENRD) [Lesley.Lawrence-Hammer@usdoj.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]
Subject: Meeting with Bayer and Syngenta and OCSPP (Call in number: **Ex. 6 Personal Privacy (PP)**)
Location: EPA Headquarters, 1200 Pennsylvania Ave. NW (William Jefferson Clinton Building), 4th Floor, Room 4045
Start: 4/5/2019 1:00:00 PM
End: 4/5/2019 2:00:00 PM
Show Time As: Busy

Please enter via the north side entrance. After clearing security, you will be escorted to the conference room. Thank you.

RE: I am writing on behalf of Bayer and Syngenta to request a joint meeting with Alex Dunn and Matt Leopold to discuss potential settlement of pending litigation challenging EPA's registration of five new active ingredients. Our clients have intervened in the litigation, which involves their products, and would appreciate the opportunity to discuss the case directly with Ms. Dunn and Mr. Leopold. Given the litigation schedule, we are hoping the meeting can occur within the next week or so. Please let me know if you need more information, and thank you for your assistance. - Byron

Byron R. Brown

Office: 202.624.2546

Mobile: **Ex. 6 Personal Privacy (PP)**

Email: bbrown@crowell.com

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Washington, DC 20004

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Message

From: Weinberg, David [DWeinberg@wileyrein.com]
Sent: 12/19/2018 3:34:01 PM
To: Weinberg, David [DWeinberg@wileyrein.com]; Dawson,Elizabeth [EDawson@crowell.com]; DoreenManchester(dmanchester@croplifeamerica.org) [dmanchester@croplifeamerica.org]; Knorr, Michele [knorr.michele@epa.gov]; bridget.mcneil@usdoj.gov [Bridget.McNeil@usdoj.gov]; Nathanson,KirstenL. [KNathanson@crowell.com]; rlattimore@croplifeamerica.org; Schwab, Justin [Schwab.Justin@epa.gov]; ctaub@steptoe.com; Waugh,Ted [Ted_Waugh@americanchemistry.com]
Subject: RE: Event: call with EPA, DOJ & Intervenors' Counsel re Mega Settlement@December 7, 2:30 – 4:00 PM

I have no idea why this went out. May have been some sort of in-pocket dial, but I was in a meeting. In any event, please ignore (and have a Merry Christmas).y kn

David B. Weinberg | Attorney at Law
Wiley Rein LLP
1776 K Street NW | Washington, DC 20006
T: 202.719.7102 | M: Ex. 6 Personal Privacy (PP) dweinberg@wileyrein.com
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From: Weinberg, David <DWeinberg@wileyrein.com>
Sent: Wednesday, December 19, 2018 10:03 AM
To: Dawson,Elizabeth <EDawson@crowell.com>; DoreenManchester(dmanchester@croplifeamerica.org) <dmanchester@croplifeamerica.org>; Knorr,Michele(knorr.michele@epa.gov) <knorr.michele@epa.gov>; McNeil,Bridget(ENRD) <Bridget.McNeil@usdoj.gov>; Nathanson,KirstenL. <KNathanson@crowell.com>; RachelLattimore <rlattimore@croplifeamerica.org>; Schwab,Justin <Schwab.Justin@epa.gov>; Taub,Cynthia <CTaub@steptoe.com>; Waugh,Ted <Ted_Waugh@americanchemistry.com>
Subject: Event: call with EPA, DOJ & Intervenors' Counsel re Mega Settlement@December 7, 2:30 – 4:00 PM

----- Event Information -----

Event: call with EPA, DOJ & Intervenors' Counsel re Mega Settlement
When: December 7, 2:30 – 4:00 PM
Where: see below
Description: Dial-in: Ex. 6 Personal Privacy (PP)
Conf. code: Ex. 6 Personal Privacy (PP)

David B. Weinberg
(o) 202-719-7102
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